

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE: TRICOR DIRECT PURCHASER)	
ANTITRUST LITIGATION)	Civil Action No. 05-340 (D. Del.)
IN RE: TRICOR INDIRECT PURCHASER)	
ANTITRUST LITIGATION)	Civil Action No. 05-360 (D. Del.)
THIS DOCUMENT RELATES TO:)	Hon. Kent Jordan, U.S.D.J.
ALL ACTIONS)	

**NOTICE OF SUBPOENA DUCES TECUM FOR
PRODUCTION OF DOCUMENTS FROM ELAN CORPORATION PLC**

TO: All counsel of record

PLEASE TAKE NOTICE, that, in accordance with the Federal Rules of Civil Procedure,
Direct Purchaser Plaintiffs hereby notice the subpoena of the following documents: see Appendix A.

The documents shall be produced on the following date at the following time and location:

Date: October 16, 2006

Location: Garwin, Gerstein & Fisher, L.L.P.
1501 Broadway, Suite 1416
New York, NY 10036

September 18, 2006

By: _____

Jeffrey S. Goddess (No. 630)
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Purchaser Class Plaintiffs*

AO 88 (Rev. 1/94) Subpoena in a Civil Case - SDNY WEB 4/99

Issued by the
UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

NEW YORK

IN RE TRICOR DIRECT PURCHASER
ANTITRUST LITIGATION

SUBPOENA IN A CIVIL CASE

IN RE TRICOR INDIRECT PURCHASER
ANTITRUST LITIGATION

CASE NUMBER: ¹ 05-340(KAJ) Consolidated

05-360 (KAJ) Consolidated

THIS DOCUMENT RELATES TO ALL ACTIONS

United States District Court
For the District of Delaware

TO: ELAN CORPORATION, PLC
875 Third Avenue, 3rd Floor
New York, NY 10022

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE EXHIBIT A

PLACE

GARWIN GERSTEIN & FISHER LLP
1501 Broadway, Room 1416, New York, NY 10036 (212) 398-0055

DATE AND TIME

October 16, 2006

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

September 20, 2006

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Adam Steinfeld

Garwin Gerstein & Fisher LLP, 1501 Broadway, New York, NY 10036 (212) 398-0066

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev. 1/94) Subpoena in a Civil Case - SDNY WEB 4/99

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that,

subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: TRICOR DIRECT PURCHASER)	
ANTITRUST LITIGATION)	Civil Action No. 05-340 (D. Del.)
IN RE: TRICOR INDIRECT PURCHASER)	
ANTITRUST LITIGATION)	Civil Action No. 05-360 (D. Del.)
THIS DOCUMENT RELATES TO:)	Hon. Kent Jordan, U.S.D.J.
ALL ACTIONS)	

**SUBPOENA DUCES TECUM FOR PRODUCTION OF
DOCUMENTS FROM ELAN CORPORATION PLC**

I. DEFINITIONS

1. The term "person" means a natural person, corporation, association, company, firm, partnership, joint venture, trust, estate, agency, department or bureau, governmental or judicial person or legal entity.

2. The term "you," "your," and "yours" shall mean, unless otherwise specified in a particular request, Elan Corporation PLC and Elan Pharma International Ltd., their predecessor and successor entities, their officers, directors, shareholders, parent and subsidiary companies (whether direct or indirect), employees, agents, attorneys, representatives and other persons acting or authorized to act on behalf of Elan Corporation PLC and/or Elan Pharma International Ltd..

3. The term "Abbott" means Abbot Laboratories, or any of its subsidiaries, divisions, subdivisions, affiliates, predecessor and successor entities, partners, officers, directors,

employees, agents, legal counsel, or any other person acting on its behalf.

4. The term "Fournier" means Fournier Industrie et Santé, and/or Laboratories Fournier S.A., or any of their subsidiaries, divisions, subdivisions, affiliates, predecessor and successor entities, partners, officers, directors, employees, agents, legal counsel, or any other person acting on their behalf.

5. The term "Tricor" means any and all drugs or pharmaceutical products which are, or have in the past been, marketed, sold or labeled under the trademark or name "TriCor" (or any variant thereof), regardless of the form, formulation, strength, dosage, dissolution rate or package size of such drugs, including but not limited to the pharmaceutical products described in the New Drug Applications Nos. NDA 19-304, NDA 21-203, and NDA 21-656.

6. The term "fenofibrate" means the active drug substance fenofibrate, and any and all products, drugs or pharmaceuticals which contain the chemical or compound fenofibrate as an active ingredient or product, including, but not limited to, Tricor.

7. The term "Elan Technology" means the proprietary technology owned by, licensed to other otherwise controlled by Elan that is directed to: (i) nanoparticulate dispersions of compounds stabilized against agglomeration of the nanoparticles and Elan's proprietary methods and materials used for making such dispersions (such technology is commonly referred to by Elan as the NanoCrystal™ technology); and (ii) Elan's proprietary processes for converting said dispersions into intermediates and/or finished tablet or capsule formulations and the intermediates, tablets and capsules created using such proprietary processes.

8. The term "document" means any written, printed, recorded, digital, electronic and/or video matter and/or tangible thing upon which any words, phrases, numbers, data and/or images are affixed or conveyed, including but not limited to any item within the scope of Rule 34 of the Federal Rules of Civil Procedure. The term "document" includes, but is not limited to, any writing, report, memorandum,

file, computer file, computer-stored data or databases in computer-readable format, computer drive, home computer contents, personal computer contents, floppy disk, zip disk, printout, communications, computer transmission, e-mail, correspondence, electronic transmission, word processing file, spreadsheet, spreadsheet program file, calculation, database, database entries, database queries, database query results, mainframe computer file, computerized spreadsheet, analysis, outline, pro forma, forecast, white paper, projection, market study, marketing plan, tactical plan, long-range plan, strategic forecast, plan of action, pricing study, budget, presentation, slide, slide deck, Powerpoint presentation, proposal, record, draft, memorialization, computerized memorialization, personal digital assistant file, message, book, survey, research, background information, talking points, list, contract, agreement, purchase order, invoice, receipt, shipping paper, catalog, brochure, manual, publication, policy statement, promotional or advertising literature or materials, credit memos or memoranda, claim form, production record, inventory record, account, letter, side letter, letter of commitment, journal, profit and loss statement, income and expense sheet, statement of financial condition, audit report, organizational chart, flow chart, addendum, check, docket sheet, brief, court filing, pleading, transcript, affidavit, deposition, discovery request, discovery response, log, calendar, list, journal, pamphlet, abstract, computation, tabulation, bill, statement, invoice, schedule, exhibit, attachment, photostat, electronic transmission, image, network communications and transmissions, satellite network communications, study, telegram, telex, agenda, minutes, bulletin, instruction, literature, memorandum of conversations, notes, notebook, diary, data sheet, work sheet, recording, tape, videotape, audiotape, internal or interoffice communication, drawing, table, diagram, graph, index, chart, telephone record, photograph, phonographic record, written memorialization of oral communication, and/or other data compilation of any other written, recorded, transcribed, punched, taped, filed and/or other graphic matter including any draft of the foregoing items upon which any notation, work, figure or form is recorded or has been made

which does not appear on the original, or as to whose existence, either past or present, the responding party has any knowledge or information.

9. The phrase "relating to" and "relates to" includes reflecting, constituting, evidencing, referring to, concerning, involving, dealing with, or bearing on (whether legally, factually, or otherwise), in whole or in part.

10. The term "communication" and "communications" include all forms of transmission of information, whether oral or in writing or in some other medium.

11. The term "correspondence" means any letter, memorandum or other writing.

12. The term "minutes" means any document created in connection with a meeting, including minutes of a meeting, exhibits and attachments to minutes of a meeting, agendas for meetings (including exhibits, attachments and/or materials distributed or circulated at, or in connection with, any meeting), notices of meetings, waivers of meetings and certification or signatures appended to or referred to in the notices, agendas or minutes.

13. The terms "and/or", "or" and "and" are used inclusively, not exclusively.

II. INSTRUCTIONS

1. Pursuant to Rule 34(b), the documents or things requested shall be produced either as they are kept in the usual course of business, or organized and labeled to correspond with the document requests to which they are responsive. If there are no documents or things responsive to any particular discovery request, you should so state in writing rather than leave the request unanswered.

2. When a document or thing that "concerns" or "concerning" any given matter is requested, the request encompasses any document or thing, as the case may be, containing, constituting, evidencing, referring to, relating to, discussing, or prepared in connection with the matter.

3. In producing documents and other materials, You are requested to furnish all documents or things in Your possession, custody or control, regardless of whether such documents or materials are possessed directly by You or Your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by Your attorneys or their agents, employees, representatives or investigators.

4. If any part of a document is responsive to any request, the whole document is to be produced.

5. Any alteration of a responsive document, including any marginal notes, handwritten notes, underlining, date stamps, received stamps, endorsed or filed stamps, drafts, revisions, modifications and other versions of a final document is a separate and distinct document and it must be produced.

6. If You file a timely objection to any portion of a request, definition, or an instruction, provide a response to the remaining portion.

7. The terms defined above and the individual requests for production and inspection should be construed broadly to the fullest extent of their meaning in a good faith effort to comply with

the Federal Rules of Civil Procedure.

8. As used in these requests, the singular shall also be treated as plural and vice versa.

9. The fact that a document is produced by another party does not relieve You of the obligation to produce Your copy of the same document, even if the two documents are identical in all respects.

10. Documents are to be produced in full. Redacted documents will not constitute compliance with these requests. If any requested document or thing cannot be produced in full, produce it to the extent possible, indicating which document or portion of that document is being withheld and the reason that document is being withheld.

11. In producing documents, You are requested to produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.

12. All documents produced shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by You. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

13. Documents shall be produced in such fashion as to identify the department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document's custodian(s).

14. Documents attached to each other should not be separated.

15. Documents not otherwise responsive to this discovery request shall be produced if such documents mention, discuss, refer to or explain the documents which are called for by this discovery request, or if such documents are attached to documents called for by this discovery request and

constitute routing slips, transmittal memoranda, letters, comments, evaluations or similar materials.

16. If You claim the attorney-client privilege, or any other privilege or work product protection for any document, You shall expressly provide the following information with respect to such document as required to comply with Rule 45(d)(2) of the Federal Rules of Civil Procedures in order to provide " a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim," including:

- a. the type of privilege or other protection being asserted;
- b. the type of document;
- c. general subject matter of the document;
- d. date of the document;
- e. such other information as is sufficient to identify the document including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other, and
- f. any other information required to be furnished by the local rules of the United States District Court for the Southern District of New York.

17. If You are producing a document which translates literally or in substance another document you are also producing, please identify in your response by Bates number the original document and the translated document.

III. RELEVANT TIME PERIOD

Unless otherwise specified, the documents sought relate to the period from January 1, 2000 through the time that the documents are produced pursuant to this Subpoena Duces Tecum. This Subpoena Duces Tecum seeks all responsive documents created or generated during the relevant time period, as well as all responsive documents created outside this time period, but which contain

information concerning this period.

IV. DOCUMENTS REQUESTED

REQUEST 1: All documents referring or relating to any license, agreement and/or relationship between Elan and Fournier and/or Abbott concerning fenofibrate and/or the Elan Technology, including, but not limited to all drafts and amendments.

REQUEST 2: All documents referring, relating to, constituting or comprising minutes or drafts of minutes of any meetings between employees of Elan and Fournier and/or Abbott, concerning fenofibrate and/or the Elan Technology.

REQUEST 3: All documents referring, relating to, constituting or comprising Elan's assessment of and/or forecasts relating to, the market for fenofibrate and/or the growth potential for sales of fenofibrate, including but not limited to documents relating to Tricor.

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2006 I electronically filed the foregoing document using CM/ECF, which will send notification of such filing to all registered participants, including:

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I hereby certify that on September 19, 2006 I sent by electronic mail the foregoing document to the following non-registered participants:

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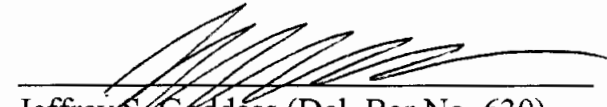
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